

AN ORDINANCE 2006-02-16-0234

SELECTING DRASH CONSULTING ENGINEERS, INC., TO PROVIDE ENGINEERING SERVICES IN CONNECTION WITH THE SOUTH FLORES: MALONE TO OCTAVIA PROJECT LOCATED IN DISTRICTS 3 AND 5, APPROPRIATING FUNDS, AND AUTHORIZING THE NEGOTIATION AND EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT, IN AN AMOUNT NOT TO EXCEED \$23,510.00, FROM HOUSING AND URBAN DEVELOPMENT (HUD) 108 LOAN PROGRAM FUNDS.

* * * * *

WHEREAS, the City Council has approved the South Flores: Malone to Octavia Project (the "Project") located in Districts 3 and 5; and

WHEREAS, in connection with said Project, there exists a need for the reconstruction of South Flores from Malone to Octavia to a 4-lane, 44-foot width roadway to include curbs, 4-foot and 6-foot sidewalks at the curbs, driveway approaches and an underground storm drain; and

WHEREAS, in connection with said Project, there also exists a need to provide for an improved turn lane at the Pleasanton Road intersection; and

WHEREAS, previously, the City staff rated all individuals and firms which submitted proposals to be considered for the above-described work, giving consideration to past experience and recognized ability and competence in providing such services; and

WHEREAS, the City staff reviewed the ratings and previously recommended to the City Council that the professional services agreement of Drash Consulting Engineers, Inc. be accepted for said work, based upon demonstrated ability and qualifications; and

WHEREAS, the City Council selected Drash Consulting Engineers, Inc. and authorized the execution of the professional services agreement (the "Agreement") by Ordinance No. 95384, dated February 28, 2002; and

WHEREAS, Drash Consulting Engineers, Inc. performed environmental services pursuant to said Agreement; and

WHEREAS, additional environmental engineering services, such as soil sampling, laboratory testing and disposal as needed, and ambient air monitoring during excavation activities, are necessary in order to continue efforts towards completion of the Project; and

WHEREAS, the Agreement with Drash Consulting Engineers, Inc. has expired; and

WHEREAS, City Staff recommends selection of Drash Consulting Engineers, Inc. to perform the necessary additional environmental engineering services in an effort to support project continuity and because of the firm's knowledge and previous experience with the Project; and

WHEREAS, City staff also recommends that a new professional services agreement with Drash Consulting Engineers, Inc. be accepted for the necessary additional environmental engineering services; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Drash Consulting Engineers, Inc. is hereby selected to provide additional environmental engineering services in connection with the South Flores: Malone to Octavia Project.

SECTION 2. The City Manager or, in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager or the Director of the Public Works Department or his designee, is hereby authorized to negotiate the terms of the professional services agreement for such environmental engineering services in an amount not to exceed \$23,510.00 with Drash Consulting Engineers, Inc.

SECTION 3. The City Manager or, in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager or the Director of the Public Works Department is hereby authorized to execute such professional services agreement in substantially the same form as Attachment I, which is incorporated by reference herein, without further action of the City Council. Should an agreement be negotiated which varies from the terms of the attached agreement, the agreement must be subsequently considered by the City Council which must approve its terms and insure that the compensation provided meets the legal requirements as set in V.T.C.A. Government Code, Title 10, Chapter 2254.004, and determine that other provisions are acceptable.

SECTION 4. The amount of \$23,510.00 is appropriated from the HUD 108 Loan Fund Number 27002000, Internal Order Number 131000001292, GL Account 6102100 – “Interfund Transfer Out” to WBS Element 23-00826-04-02, entitled “Environmental Costs.” The amount of \$23,510.00 is authorized to be transferred to Fund Number 45099000.

SECTION 5. The budget in Fund Number 45099000, Project Definition 23-00826, shall be revised by increasing WBS Element 23-00826-04-02, entitled “Environmental Costs,” using Internal Order Number 131000001292, GL Account 6101100 – “Interfund Transfer In,” by the amount of \$23,510.00. GL Account 5201040, entitled “Fees to Professional Contractors” is hereby designated for use in accounting for this transaction. Payment is authorized in the amount of \$23,510.00 to Drash Consulting Engineers, Inc.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 7. This Ordinance shall become effective on and after the 26th day of February, 2006.

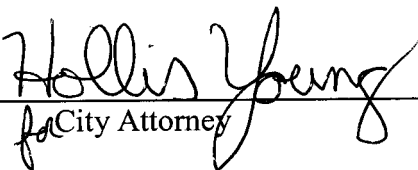
PASSED AND APPROVED this 16th day of February, 2006.



M A Y O R

PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

Agenda Voting Results

Name: 8.

Date: 02/16/06

Time: 11:46:47 AM

Vote Type: Multiple selection

Description: An Ordinance selecting Drash Consulting Engineers, Inc. to provide engineering services in connection with the South Flores: Malone to Octavia Project located in Districts 3 and 5, appropriating funds, and authorizing the negotiation and execution of a professional services agreement, in an amount not to exceed \$23,510.00, from Housing and Urban Development (HUD) 108 Loan Program funds.
[Presented by Thomas Wendorf, Director, Public Works; Jelynn LeBlanc Burley, Deputy City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR	Not present			

ATTACHMENT I
PROFESSIONAL SERVICES AGREEMENT
FOR
CONSTRUCTION SITE MONITORING

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "CITY"), and Drash Consulting Engineers, Inc., by and through its Senior Project Manager, David P. Young (hereinafter referred to as "CONSULTANT"), both of which may be referred to herein collectively as the "PARTIES".

The PARTIES hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 "Director" means the director of CITY's Public Works Department, or the designated project manager identified by the Notice to Proceed.
- 1.2 "Project" means the Construction Site Monitoring for reconstruction activities along Flores at Malone to Octavia in San Antonio, Texas undertaking of CITY for which CONSULTANT's professional services, as stated in the attached proposal, are to be provided pursuant to this Agreement.

II. PURPOSE STATEMENT

2.1 The purpose of this Agreement is to set out the parameters by which CONSULTANT shall provide professional services to the CITY. CONSULTANT agrees to monitor and oversee environmental health and safety conditions as well as handling potentially impacted soils generated during excavation activities at the site.

III. TERM

3.1 Except as otherwise provided pursuant to the provisions hereof, this Agreement shall begin once CONSULTANT is provided a Notice to Proceed and continues in full force and effect for the period required for completion of the duties as set forth in the CONSULTANT'S proposal.

IV. SCOPE OF WORK

4.1 CONSULTANT, in accordance and compliance with the terms, provisions and requirements of this AGREEMENT; shall manage, perform and provide all activities and services and produce all reports set out in the Scope of Work attached hereto and incorporated herein for all purposes as Exhibit "A".

4.2 Modifications or alterations to Exhibit "A" may be made only pursuant to prior notification and written approval of CITY.

V. RECORDS AND REPORTS

5.1 CONSULTANT shall maintain fiscal records and supporting documentation for all expenditures of funds made under this Agreement in a manner that conforms to this Agreement. CONSULTANT shall retain such records, and any supporting documentation, for the greater of five (5) years from the end of the Agreement period, or the period required by other applicable laws and regulations.

5.2 CONSULTANT shall give CITY and or any of CITY's duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by CONSULTANT pertaining to this Agreement. Failure to provide reasonable access to authorized CITY representatives shall give the CITY the right to terminate the Agreement.

5.3 As often and in such form as CITY may require, CONSULTANT shall furnish CITY such performance records and reports as deemed by CITY as pertinent to matters covered by this Agreement.

VI. PERSONNEL

6.1 CONSULTANT agrees to and shall provide any and all staffing to accomplish the Scope of Work attached hereto as Exhibit "A".

VII. COORDINATION WITH CITY

7.1 The Director, or his designated representative, shall have complete authority to transmit instructions, receive information, and interpret the CITY's policies and decisions with respect to materials, elements and work pertinent to this Agreement. Any contact with CITY officials shall be coordinated with the Director.

VIII. FEES, EXPENSES AND BILLING

8.1 In consideration of CONSULTANT'S performance in a satisfactory and efficient manner, as determined solely by CITY, of all services and activities set forth in Article IV of this AGREEMENT, CITY agrees to pay CONSULTANT an amount not to exceed **TWENTY THREE THOUSAND, FIVE HUNDRED - TEN DOLLARS (\$23,510.00)**

8.2 CITY shall make payments to the CONSULTANT in one lump sum payable at the satisfactorily completion of the Project. CITY shall not be obligated or liable under this Agreement to any other party, other than CONSULTANT, for payment of any monies or provisions of any goods or services.

8.3 No additional expenses shall be charged to CITY by CONSULTANT.

IX. LEGAL/LITIGATION EXPENSES

9.1 Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against CITY. CONSULTANT must obtain the written approval of the City Attorney's Office before any funds received under this Agreement may be used in any adversarial proceeding against any other governmental entity or any other public entity.

9.2 During the term of this Agreement, if CONSULTANT files and/or pursues an adversarial proceeding against CITY then, at CITY's option, this Agreement and all access to the funding provided for hereunder may terminate if it is found that CONSULTANT has violated this Article.

9.3 CONSULTANT, at CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remains unresolved.

9.4 For purposes of this Article, "adversarial proceedings" include any cause of action filed by CONSULTANT in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

X. TERMINATION

10.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term or extended term, if applicable, or earlier termination pursuant to any of the provisions hereof.

10.2 This Agreement may be terminated by CITY for substantial failure by CONSULTANT to perform in accordance with the terms of hereof. CITY must issue a signed, written notice of termination (citing this paragraph) to CONSULTANT, which shall take effect on the tenth (10th) day following receipt of said notice.

10.3 In addition to any other provision of this Agreement, CITY may terminate this Agreement for any of the following:

A. Neglect or failure by CONSULTANT to perform or observe any of the terms, conditions, covenants or guarantees of this Agreement or of any amendment hereto between CITY and CONSULTANT; or

B. Violation by CONSULTANT of any rule, regulation or law to which CONSULTANT is bound or shall be bound under the terms of this Agreement.

10.4 CITY may terminate this Agreement, in whole or in part, whenever it determines, within its sole discretion, termination is in the best interest of CITY.

10.5 Upon a decision to terminate by CITY, written notice of such shall be immediately provided to CONSULTANT specifying the effective date of termination and the extent to which performance of work under this Agreement will be terminated.

XI. INDEPENDENT CONTRACTORS

11.1 It is expressly understood and agreed by the **PARTIES** to this Agreement that CITY is contracting with CONSULTANT as an independent contractor. The **PARTIES** understand and agree that CITY shall not be liable for any claims, which may be asserted by any third party against CONSULTANT occurring in connection with services performed under this Agreement.

11.2 The **PARTIES** further understand and agree that neither party has authority to bind the other or to hold out to third **PARTIES** that it has the authority to bind the other.

XII. INSURANCE REQUIREMENTS

12.1 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this Agreement.

12.2 Prior to the commencement of any work under this Agreement, CONSULTANT shall furnish a completed Certificate of Insurance to CITY's Public Works Department Director and City's Risk Management Division. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the City's Public Works Department Director, and no officer or employee shall have authority to waive this requirement.

12.3 CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will CITY allow modification whereupon CITY may incur increased risk.

12.4 CONSULTANT's financial integrity is of interest to CITY, therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-(vii) or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

	<u>TYPE</u>	<u>AMOUNT</u>
(A)	Worker's Compensation, as applicable Employer's Liability, as applicable	Statutory \$500,000/\$500,000/\$500,000
(B)	Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
(C)	Professional Liability (Claims Made Form)	\$100,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

12.5 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the **PARTIES** hereto or the underwriter of any such policies). Upon such request by CITY, CONSULTANT shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

12.6 CONSULTANT agrees that with respect to the above required insurance, all insurance Contracts and Certificate(s) of Insurance will contain the following required provisions.

- Name CITY and its officers, employees, and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured performed under Agreement with CITY, with the exception of the workers' compensation and professional liability policies;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY.

12.7 CONSULTANT shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than seven (7) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

**City of San Antonio
Public Works Department
P.O. Box 839966
San Antonio, Texas 78283-3966**

12.9 If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become due, to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.

12.10 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subconsultants' performance of the work covered under this Agreement.

12.11 It is agreed that CONSULTANT's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this AGREEMENT.

XIII. INDEMNITY

13.1 REGISTERED ARCHITECT whose work product is the subject of this contract for architectural services agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY REGISTERED ARCHITECT'S NEGLIGENT ACT, ERROR, OR OMISSION OF REGISTERED ARCHITECT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF REGISTERED ARCHITECT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT REGISTERED ARCHITECT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

13.2 Pursuant to Section 271.904 of the Texas Local Government Code, or its successor provision, REGISTERED ARCHITECT whose work product is the subject of this contract for architectural services, EXPRESSLY AGREES to INDEMNIFY AND HOLD CITY, ITS AGENTS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, for the personal injury, death, or property injury of

REGISTERED ARCHITECT, the employees of REGISTERED ARCHITECT or third parties for which recovery of damages is sought that may arise which are caused by the NEGLIGENCE act of the REGISTERED ARCHITECT, ITS AGENTS or EMPLOYEES of the REGISTERED ARCHITECT while in the exercise and/or performance of the rights or duties under this Contract.

13.3 It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in section 13.2, is an INDEMNITY extended by REGISTERED ARCHITECT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY, ITS AGENT AND EMPLOYEE from the consequences of the NEGLIGENCE of the REGISTERED ARCHITECT, ITS AGENTS OR EMPLOYEES in instances where such NEGLIGENCE causes personal injury death or property injury to REGISTERED ARCHITECT, employees of REGISTERED ARCHITECT or third parties; or any other expense that arises from personal injury, death, or property injury to REGISTERED ARCHITECT, employees of REGISTERED ARCHITECT or third parties. REGISTERED ARCHITECT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY in connection with any such injury, death or property injury for which this INDEMNITY shall apply, as set forth above.

13.4 REGISTERED ARCHITECT shall promptly advise the CITY, in writing within twenty four (24) hours, of any claim or demand against the CITY or REGISTERED ARCHITECT known to REGISTERED ARCHITECT related to or arising out of REGISTERED ARCHITECT's activities under this contract.

13.5 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XIV. SEVERABILITY

14.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the CITY Charter, CITY Code, or Ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the **PARTIES** hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the **PARTIES** hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XV. CHANGES AND AMENDMENTS

15.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONSULTANT.

XVI. ENTIRE AGREEMENT

16.1 This Agreement constitutes the final and entire Agreement between the **PARTIES** hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the **PARTIES** hereto unless the same be in writing, dated subsequent to the date hereof, and only executed by said **PARTIES**.

XVII. NOTICES

17.1 All notices reports, and deliverables to be given or made by **CONSULTANT** to **CITY** pursuant to this Agreement shall be given or made to the following or such place as may be designated by **CITY** from time to time in writing:

City of San Antonio
Public Works Department
P.O. Box 839966
San Antonio, Texas 78283-3966

17.2 All notices reports, and documents required to be given or made by the **CITY** to **CONSULTANT** pursuant to this Agreement shall be given to **CONSULTANT** at its address set forth below:

Drash Consulting Engineers, Inc.
6911 Blanco Road
San Antonio, Texas 78216
Attn: David P. Young

XVIII. ASSIGNMENT OF RIGHTS

18.1 By entering into this AGREEMENT, **CITY** has approved the use of any subconsultants identified in **CONSULTANT's** Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subconsultants as are identified in **CONSULTANT's** Interest Statement.

18.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**. Actual engineering services, those required by law to be performed by a licensed engineer, or services to be performed which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this AGREEMENT may be subcontracted upon the written approval of Director.

18.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subconsultant. Any references in this AGREEMENT to an assignee, transferee, or subconsultant, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

18.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VIII, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

18.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VII, Termination.

XIX. NO PERSONAL LIABILITY

19.1 No elected official, director, officer, agent, or employee of **CITY** shall be charged personally or held Contractually liable by or to **CONSULTANT** under any term or provision of this Agreement, or because of any breach thereof, or because of its or their execution, of approval, or attempted execution of this Agreement.

XX. GOVERNING LAW

20.1 This Agreement and performance hereunder shall be construed in accordance with the laws of the State of Texas. In any action, arising out of, in connection with or by reason of the Agreement, the laws of the State of Texas shall be applicable and without regard to the jurisdiction in which the action or special proceeding may instituted.

XXI. LEGAL AUTHORITY

21.1 The signer of this Agreement for **CONSULTANT** represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of **CONSULTANT** and to bind the **CONSULTANT** to all of the terms, conditions, provisions and obligations herein contained.

XXII. PARTIES BOUND

22.1 This Agreement shall be binding on and inure to the benefit of the **PARTIES** hereto and their respective legal representatives, successors and assigns, except as otherwise expressly provided for herein.

XIII. INTEREST IN CITY CONTRACTS PROHIBITED

23.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined in the Ethics

Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee, his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

23.2 **CONSULTANT** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY's** Ethics Code.

Executed in duplicate originals this _____ day of _____, 2006.

CITY OF SAN ANTONIO

**DRASH CONSULTING
ENGINEERS, INC.**

Sheryl Sculley
City Manager

David P. Young
Senior Project Manager

ATTEST:

Leticia M. Vacek, TRMC, CMC
City Clerk

APPROVED:

Michael Bernard
City Attorney

EXHIBIT "A"
SCOPE OF WORK

SEE ATTACHED CONSULTANT'S PROPOSAL

EXHIBIT "A"



Geotechnical • Construction Materials • Environmental
Forensic • Electric Transmission & Distribution

December 13, 2006

Mr. John Cantu
City of San Antonio
Environmental Services Division
1920 Grandstand
San Antonio, Texas 78238

SUPPLEMENTARY PROPOSAL
Flores at Malone to Octavia
Construction Site Monitoring
San Antonio, Bexar County, Texas
DCE Proposal N^o H061007

Dear Mr. Cantu:

Drash Consulting Engineers (DCE) is pleased to submit this supplementary proposal to conduct Construction Site Monitoring for reconstruction activities along Flores at Malone to Octavia in San Antonio, Texas. The following sections present our proposed scope of work, time and cost information, and procedures for authorization to perform these services.

PROJECT INFORMATION

DCE is currently providing environmental construction monitoring for the above-referenced project. We understand that the City of San Antonio is interested in extending these services based on the contractor schedule. Along the construction route, excavated soils in certain areas have been impacted with petroleum hydrocarbons. It is anticipated that the project will cover approximately an additional six (6) weeks and a work schedule of eight (8) hours per day. In addition, the volume of soil (3,300 cubic yards) approved by the project landfill for disposal may potentially be exceeded during this project extension. At the client's request, costs for the sampling of on-site soils and laboratory analysis (profiling the soil for disposal) are also included in this proposal.

This proposal outlines DCE's proposal for providing environmental services involving soil removal and ambient air monitoring for volatile organic vapors that may result from excavation activities.

SCOPE OF SERVICES

The purpose of the construction site monitoring is to oversee environmental health and safety conditions as well as handling potentially impacted soils generated during excavation activities at the site. In order to perform these tasks, DCE proposes conducting the scope of work outlined below:

San Antonio
6911 Blanco Road • San Antonio, Texas 78216
(210) 641-2112 • (800) 332-1728 • Fax: (210) 641-2124

E-Mail: drash@drasnce.com

San Antonio • Laredo • Rio Grande Valley

A DCE representative will be present on site during the duration of the extended 6-week construction project. DCE will provide technical assistance, as required, for the proper handling of potentially impacted soils that are generated during excavation activities.

- Ambient air monitoring near excavation areas will be performed throughout each day with an Organic Vapor Meter equipped with a photo-ionization detector (PID) to check for potential volatile organic compounds that may be encountered.
- The excavated waste stream will be monitored visually by DCE for evidence of potential environmental concerns. DCE will assist in the manifesting of excavated waste materials for disposal, including the processing of waste manifests with the truck drivers and the tabulation of material quantity.
- DCE will be available to attend planning meetings with contractor and City of San Antonio representatives to discuss the project and coordinate project schedule, logistics, and responsibilities.
- A report will be prepared to summarize our findings. The report will include a background information summary, visual observations, attachment of field documentation, and our conclusions.
- In order to profile additional cubic yards of impacted soil which may potentially be excavated during this project, DCE will collect a total of 13 composite samples from on-site soils in the delineated contamination zones. Representative sampling points along the contamination zone or from resulting stockpiles will be selected for combination into the 13 composite samples for analysis. Samples will be collected using a clean hand tool and clean, disposable gloves. Samples will be placed in laboratory provided jars with Teflon-lined caps and placed on ice for transport. Based on information gathered from the Waste Management Plan for this project, the composite samples will analyzed for Total Petroleum Hydrocarbons (TPH), Volatile Organic Compounds (VOCs), and Polynuclear Aromatic Hydrocarbons (PAHs).

TIME AND COST INFORMATION

The estimated costs for completion of the environmental services are based on the costs of completing the work as indicated below:

Project Management / Meetings (8 hrs @ \$95.00/hr)	\$760.00
DCE Field Personnel (1 field technician, 30 days, 8 hrs/day @ \$60.00/hr)	\$14,400.00
PID Rental (6 weeks @ \$175.00/wk)	\$1,050.00
TPH [8 @ \$60.00/sample x 100% surcharge (24-hour turnaround)]	\$960.00
PAHs [8 @ \$175.00/sample x 100% surcharge (24-hour turnaround)]	\$2,800.00
VOCs [8 samples @ \$115.00/sample x 100% surcharge (24-hour turnaround)]	\$1,840.00
TPH [5 samples @ \$65.00/sample (7-10 day turnaround)]	\$325.00
PAHs [5 samples @ \$175.00/sample (7-10 day turnaround)]	\$875.00
VOCs [5 samples @ \$100.00/sample (7-10 day turnaround)]	\$500.00
Total	\$23,510.00

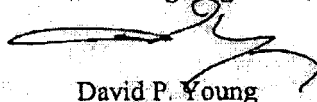
The total estimated cost for completion is \$23,510.00 if the project goes for the full duration of thirty (30) working days and additional soil profiling is needed, and will be invoiced on a time and materials basis. We will initiate our work upon your authorization to proceed.

A distribution sheet has also been attached to expedite report distribution and project correspondence to the required project participants. Please complete this document and return it with the signed proposals.

This proposal is valid for a period of 90 days from the date of this proposal. After this date, our proposal may need to be revised to reflect any change in project scope and fee.

We look forward to working with you on this project. Please contact us if you have any questions concerning these services or require adjustments to our approach or schedule.

Very truly yours,
Drash Consulting Engineers, Inc.


David P. Young
Senior Project Manager
Environmental Division

DISTRIBUTION SHEET

Thank you for choosing Drash Consulting Engineers, Inc. to provide these services. Please fill out below the pertinent information below so that we may expedite report distribution, project correspondence and invoice(s) to appropriate person(s). If you have any questions please do not hesitate to contact our office.

Project Name: _____

Client

Copies _____ Firm _____

Address _____

Attn _____ P(_____) _____ F(_____) _____

Invoice (do not complete if same as client)

Copies _____ Firm _____

Address _____

Attn _____ P(_____) _____ F(_____) _____

Report Distribution (Clients, Architects, Engineers, Contractors, etc....)

Copies _____ Firm _____

Address _____

Attn _____ P(_____) _____ F(_____) _____

Copies _____ Firm _____

Address _____

Attn _____ P(_____) _____ F(_____) _____

Copies _____ Firm _____

Address _____

Attn _____ P(_____) _____ F(_____) _____

Copies _____ Firm _____

Address _____

Attn _____ P(_____) _____ F(_____) _____

Copies _____ Firm _____

Address _____

Attn _____ P(_____) _____ F(_____) _____

If you need more room or would like to send other pertinent information please provide on the back of this sheet. Thank you for your time and concern to this matter.



Drash
Consulting
Engineers, Inc.

**CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Sheryl Sculley, City Manager

FROM: Thomas G. Wendorf, P.E., Director of Public Works

SUBJECT: South Flores: Malone to Octavia

DATE: February 16, 2006

SUMMARY AND RECOMMENDATIONS

An Ordinance selecting Drash Consulting Engineers, Inc. to provide engineering services in connection with the South Flores: Malone to Octavia Project; appropriating funds, and authorizing the negotiation and execution of a professional services agreement, in an amount not to exceed \$23,510.00; from Housing and Urban Development (HUD) 108 Loan Program Funds, located in Districts 3 and 5.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

This project will provide for the reconstruction of South Flores from Malone to Octavia to a 4-lane, 44-foot width roadway to include curbs, 4-foot and 6-foot sidewalks at the curb, driveway approaches, and an underground storm drain. This project will also provide for an improved turn lane at the Pleasanton Road intersection. Project construction began in July of 2005 and is anticipated to be completed by October of 2006.

Drash Consulting Engineers, Inc. previously completed environmental services on the South Flores: Malone to Octavia project, which included environmental monitoring and oversight under an indefinite delivery agreement between them and the Environmental Services Department that has since expired. In an effort to support project continuity and because of Drash Consulting Engineers, Inc.'s knowledge and previous experience with the South Flores project, it is recommended that we continue to utilize them until the project is complete. This ordinance authorizes the execution of a new professional services agreement with Drash Consulting Engineers, Inc. for additional environmental services on this project such as soil sampling, laboratory testing and disposal as needed, and ambient air monitoring during excavation activities and authorizes compensation in the amount of \$23,510.00. It is anticipated that this cost will cover environmental services through the remainder of the project.

POLICY ANALYSIS

Approval of this ordinance will be a continuation of City Council policy to participate in the development and construction of City selected and approved MPO projects, which are approved annually by Council.

FISCAL IMPACT

This is a one-time capital improvement expenditure within budget and included in the FY 06-11 Capital Improvement Program Budget. Funds in the amount of \$23,510.00 are available from Housing and Urban Development (HUD) 108 Loan Program funds to be appropriated and made payable to Drash Consulting Engineers, Inc.

COORDINATION

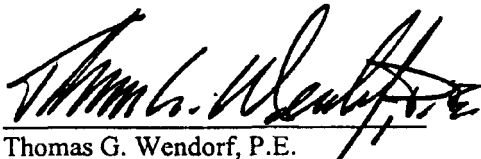
This request has been coordinated with the Office of Management and Budget, the Finance Department, and the Environmental Services Department.


SUPPLEMENTARY COMMENTS

The Discretionary Contracts Disclosure form required by the Ethics Ordinance is attached.

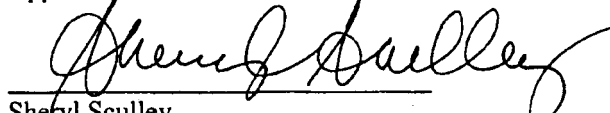
ATTACHMENTS

1. Project Map
2. Discretionary Contracts Disclosure Form


Thomas G. Wendorf, P.E.
Director of Public Works


Jelynn LeBlanc Burley
Deputy City Manager

Approved for Council Consideration:


Sheryl Sculley
City Manager

South Flores: Malone to Octavia

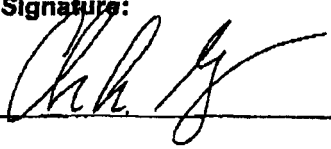


**C. City of San Antonio
Discretionary Contracts Disclosure**

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity ¹ that is a party to the discretionary contract:	
Chester J. Drash, Jr., P.E.	
(2) Identify any individual or business entity which is a partner, parent or subsidiary business entity, of any individual or business entity identified above in Box (1):	
<input checked="" type="checkbox"/> No partner, parent or subsidiary; or	
List partner, parent or subsidiary of each party to the contract and identify the corresponding party:	
(3) Identify any individual or business entity that would be a subcontractor on the discretionary contract.	
<input checked="" type="checkbox"/> No subcontractor(s); or	
List subcontractors:	
(4) Identify any lobbyist or public relations firm employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.	
<input checked="" type="checkbox"/> No lobbyist or public relations firm employed; or	
List lobbyists or public relations firms:	

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any <i>current</i> or <i>former member</i> of City Council, any <i>candidate</i> for City Council, or to any <i>political action committee</i> that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):				
<input type="checkbox"/> No contributions made; If contributions made, list below:				
By Whom Made:	To Whom Made:		Amount:	Date of Contribution:
Chester J. Drash	Bonnie Carter		\$70.00	July 2002
	Carroll Schubert		\$70.00	July 2002
	Bobby Perez		\$70.00	August 2002
	Louis Rowe		\$250.00	January 2003
	Carroll Schubert		\$250.00	April 2003
	Carroll Schubert		\$500.00	April 2003
	Toni Moorhouse		\$250.00	April 2003
	Enrique Barrera		\$250.00	April 2003
	Carroll Schubert		\$1,000.00	July 2004
	Richard Perez		\$500.00	August 2004
	Silvia Romo		\$250.00	October 2004
	Carroll Schubert		\$250.00	January 2005
	Julian Castro		\$500.00	February 2005
	Phil Hardberger		\$500.00	February 2005
(6) Disclosures in Proposals Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question ² as to whether any city official or employee would violate <u>Section 2-43 of the City Code (Ethics Code)</u> , ("conflicts of interest") by participating in official action relating to the discretionary contract.				
<input checked="" type="checkbox"/> Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or Party aware of the following facts:				
This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.				
Signature:	Title: Vice President		Date:	
	Company or D/B/A:		January 18, 2006	
	Drash Consulting Engineers, Inc.			

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Sheryl Sculley, City Manager

FROM: Thomas G. Wendorf, P.E., Director of Public Works

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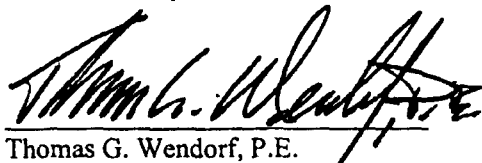
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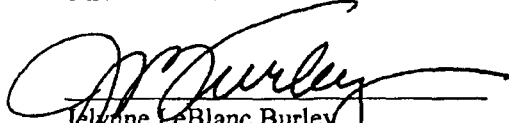
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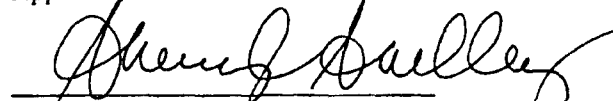
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Jelynn LeBlanc Burley
Deputy City Manager

Approved for Council Consideration:


Sheryl Sculley
City Manager

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